No. 14-55592
U.S.D.C. No.3:12-cv-01718-GPC-BLM

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RICHARD M. HORN, an individual and as Trustee of the Richard M. Horn Trust Dated June 16, 2003, on behalf of himself and all others similarly situated and MARIA GUREVICH, an individual, on behalf of herself, and on behalf of the class of all others similarly situated,

Plaintiffs and Appellees,

SUSAN HOUSE

Objector and Appellant,

v.

BANK OF AMERICA, N.A., a national banking association,

Defendant and Appellee.

RESPONSE OF APPELLEES RICHARD HORN and MARIA GUREVICH TO MOTION OF APPELLANT SUSAN HOUSE FOR AN ORDER VACATING DISMISSAL OF APPEAL; REQUEST FOR AN ORDER TO SHOW CAUSE; SUPPORTING DECLARATION and EXHIBITS

Appeal from the United States District Court
For the Southern District of California

The Honorable Gonzalo P. Curiel, United States District Judge

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Attorney Palmer's showing is a textbook example of how less is not more. When trying to get out from under a dismissal entered after this Court's generous 21-day grace period expired with no action being taken, bare statements about an unexplained "calendaring error" and the contradictory argument of the press of business are simply not sufficient. The law has never favored legal lassitude. Particularly disfavored are excuses that raise more questions than answers and, even worse, excuses that expose that counsel has put his personal interests ahead of those of his clients. Both types of excuses exist here. And both should be rejected, regardless of which legal standard applies.

Extraordinary circumstances is the standard to be met for recalling this Court's mandate in general and, under this Court's General Orders, for reinstating an appeal in particular. Palmer's perfunctory assertions of some unspecified calendaring error and a pending out-of-state trial fall woefully short of demonstrating extraordinary circumstances. Even under a more lenient standard of good cause or excusable neglect, the sketchy excuses do not meet the required burden.

Nor should the Court be surprised that attorney Palmer and appellant House flouted this Court's 21-day grace period. Their cavalierness is what led the district court to strike House's objection to the class action settlement in the first place.

- When appellees Horn and Gurevich pointed out in the district court that House's documentation failed to show her membership in an eligible class, what did House and Palmer do? Nothing. No reply. No request for additional time. No supplemental declaration.
- When appellee Bank of America joined in Horn and Gurevich's response to the objection, what did House and Palmer do? Nothing.
- When the court, at the fairness hearing, gave House an opportunity to cure the standing problem then and there, what did House and Palmer do? Nothing. They did not show enough respect for their own motion to even appear at the fairness hearing, despite filing a notice of intent to do so. (Palmer's office is located just a few miles from the district court.)
- Although they did not bother to show up at the final fairness hearing, they nonetheless filed their notice of appeal within hours of the judgment being entered, but did not pay the filing fee.

- Then, after receiving this Court's notice giving them a 21-day grace period, what do they do about the fee? Again. Nothing.
- Five days after the 21-day grace period lapsed, this Court dismissed their appeal, from which now they seek relief.

Enough already. The motion for reinstatement should be denied. Alternatively, appellant should be ordered to show cause why the order striking her objection should not be summarily affirmed based on the district court's finding that House failed to meet her burden of demonstrating that she had standing to object.

II. Relevant Facts.

A. The filing fee is not paid within the grace period of 21 days.

House filed her appeal on April 14, 2014. Vendler Dec., Exh. "A." The appeal was docketed despite House's failure to then pay the filing fee.

This Court on April 17, 2014 gave House an additional 21 days – to May 8, 2014 – in which to pay the fee. Vendler Dec., Exh. "B." House did not pay the fee, ask for an extension, or ask to proceed in forma pauperis, during this 21-day grace period. She and her attorney did nothing. The court-imposed grace period expired on May 8th.

May 9th.

May 10th.

May 11th.

May 12th – all came and went with no payment of the fee.

On May 13th, this Court dismissed House's appeal. Vendler Dec., Exh. "C."

House now asks this Court to reinstate her appeal.

Her somewhat conflicting reasons follow.

B. Attorney Palmer's excuses for not paying within the grace period.

House's attorney summarily declares that he was "unaware of the failure to submit payment because of a calendaring error," and that he was preparing for an out-of-state trial that was set to commence on May 16. Palmer Dec., ¶ 4.

No further explanation is given. Nothing more is said about the supposed calendaring error or the upcoming trial.

III. Argument

A. None of attorney Palmer's excuses demonstrates "extraordinary circumstances" meriting a restoration of this Court's jurisdiction.

Appellate jurisdiction lapsed with the dismissal of House's appeal. As stated in this Court dismissal order, "This order served on the district court shall constitute the mandate of this court." Order at 2; see also Fed.R.App.Proc. 41(a) ("Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs."); Fed.R.App.Proc. 41, Advisory Committee Notes to 1998 Amendments ("the mandate is effective upon issuance and its effectiveness is not delayed until receipt of the mandate by the trial court . . . .")

Thus, House's threshold burden is to persuade this Court to restore its jurisdiction by recalling its mandate. It is a heavy burden. And her showing manifestly comes up short.

The recall power is used sparingly. *Extraordinary circumstances* are required. "In light of the profound interests in repose attaching to the mandate of a court of appeals, however, the power [to recall the mandate] can be exercised only in extraordinary circumstances. The sparing use of the power demonstrates it is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998)(internal citations omitted). As this Court explained, "we will recall a mandate only when we are animated by 'an overpowering sense of fairness and a firm belief that this is the exceptional case requiring recall of the mandate in order to prevent an injustice.'" *Nevius v. Sumner*, 105 F.3d 453, 460 (9th Cir. 1996) quoting *Verrilli v. City of Concord*, 557 F.2d 664, 665 (9th Cir. 1997).

Recalled cases fall into a narrow universe. It is typically limited to instances where there is an intervening statutory change, or a Supreme Court decision that undermines the basis of this Court's decision. *Malik v. Brown*, 65 F.3d 148, 149 (9th Cir. 1995)(statute); *United States v. Davis*, 36 F.3d 1424, 1429-30 (9th Cir. 1994)(Supreme Court decision); *Bryant v. Ford Motor Co.*, 886 F.2d 1526, 1529-30 (9th Cir. 1989)(statute); *Zipfel v. Halliburton Co.*, 861 F.2d 565, 567-68 (9th Cir. 1988)(Supreme Court decision).

Conversely, not even a judicial snafu warrants a recall of this Court's mandate. *Calderon, supra*, 523 U.S. at 551 (judicial miscommunications arising out of mishandled law clerk transition in an appellate judge's chambers, and the failure of an off-panel appellate judge to notice that the original panel wanted a particular disposition of a suggestion for rehearing en banc); see also, *M2 Software, Inc. v. Madacy Entertainment*, 463 F.3d 870 (9th Cir. 2006)(panel judge's indirect financial interest in decided case does not warrant recall of mandate); *Nevius, supra* (recall denied where granting of relief would avoid procedural bars to subsequent habeas petitions).

Here, no reasonable person looking at attorney Palmer's declaration would conclude that an unexplained "calendaring error" and preparations for an upcoming trial come even close to showing extraordinary circumstances. If, as in *Calderon*, a judicial snafu is not enough to justify the recalling of this Court's mandate, surely an attorney snafu falls short as well.

B. Even if appellate jurisdiction is intact, this Court's General Orders requires attorney Palmer to demonstrate "extraordinary and compelling circumstances" to reinstate the appeal.

Assuming, *arguendo*, that this Court's dismissal order means something other than what it plainly says – namely, the order itself is the mandate – House must still meet an extraordinary circumstances standard to reinstate her appeal.

Under this Court's General Orders, a motion to reinstate an appeal requires a showing of "extraordinary and compelling circumstances." General Orders, Ch. II, §2.4. Motions for Reinstatement. Extraordinary circumstances are extraordinary circumstances. Thus, the absence of extraordinary circumstances to justify a recall of the mandate likewise means the absence of extraordinary circumstances to reinstate her appeal under this Court's General Orders.

C. Even under a more forgiving "good cause" standard, attorney Palmer's showing comes up short.

Attorney Palmer suggests that a "good cause" standard governs the motion to reinstate the appeal. Motion at 2; Palmer Dec. at ¶ 5. Even if that more lenient standard applies, it is not met.[1]

[1] The "good cause" authority appears to be Federal Rule of Appellate Procedure 27(b). Motion at 1 [quoting Rule 27(b)'s language that, "A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action."]. Rule 27(b) authorizes the clerk to enter a procedural order on a party's motion without waiting for the other side's response. Rule 27(b) does not apply here. House's appeal was

"Good cause" is generally synonymous with "excusable neglect." *In re Sheehan,* 253 F.3d 507, 512 (9th Cir. 2001)("at a minimum, good cause means excusable neglect")(quoting *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). Four factors are weighed to determine whether or not excusable neglect exists: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the moving party's conduct was in good faith. (*Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004)(en banc)(citing *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993).

While no one factor is determinative, the third factor – the reason for the delay – is often the focus. *Pincay, supra,* 389 F.3d at 859 (pointing out that the parties "focus their arguments on the remaining factor: the reason for the delay"); *id.* at 861 (Kozinski, J., Rymer, J., McKeown, J., dissenting)(reason for delay is often "the most important" *Pioneer* factor); *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000)(under *Pioneer,* attorney's reason for missing a deadline is "key to the

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dismissed under Ninth Circuit Rule 42-1, which does not contain the remedial language found in Rule 27(b).

analysis"); *Graphic Communications Intern. Union, Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5-6 (1st Cir. 2001)("the reason-for-delay factor will always be critical to the inquiry")(internal citation omitted).

Thus, we start with Palmer's proffered reasons.

1. Reasons for not paying within the 21-day grace period.

Neither the calendaring error nor the out-of-state trial withstands even the lightest scrutiny.

Calendaring Error. Attorney Palmer states that he was "unaware of the failure to submit payment because of a calendaring error." Palmer Dec., ¶ 4.

First of all, why wasn't the fee paid when the notice of appeal was first filed? See Fed.R.App.Proc. 12, Advisory Committee Notes to 1979 Amendments ("The fee is paid at the time the notice of appeal is filed[,] and the appeal is entered on the docket upon receipt of a copy of the notice of appeal and of the docket entries. . . ."). If it had been, there would be no issue. Instead, Palmer *chose* not to pay the fee at that time. How could Palmer thus be "unaware of the failure to submit payment," when it was

Palmer who deliberately filed the notice of appeal without making payment in the first place?

Moreover, how could he be "unaware of the failure to submit payment" when he does not deny in his declaration that he received this Court's April 17, 2014 notice imposing the 21-day grace period? But even ignoring these inconsistencies and taking him at his word, his declaration is completely inadequate to demonstrate any kind of good cause. Calendaring is certainly a matter within an attorney's control.

- What exactly was the calendaring error? This is nowhere explained. Compare, *Pincay, supra*, 389 F.3d at 859 (attorney described a "carefully designed calendaring system operated by experienced paralegals that heretofore had worked flawlessly").
- What internal procedures does Palmer maintain in his office to prevent such calendaring errors? Palmer provides no details that any such procedures exist.
- How did this item slip through whatever procedures might exist at Palmer's office? Palmer provides no explanation.
- When was the fee (erroneously) calendared to be paid? Palmer does not say.

- When did Palmer think the fee was due? Palmer again does not say.

Thus, as played by attorney Palmer, "calendaring error" is an *ipse dixit* excuse that raises more questions than it answers.

The May 16th Trial in New York. Attorney Palmer further states that he was "preparing for trial in USDC, SDNY which begins on May 16." Palmer Dec., ¶ 4. Palmer provides no further explanation about this case or why it somehow prevented him from paying the fee. Moreover, the "I was too busy" excuse is plainly inconsistent with the "calendaring error" excuse previously discussed. Which is it? Was Palmer aware of the deadline and too busy to meet it, or was he unaware of the deadline, and thus his "business" played no part in his failure to pay?

In either event, "I'm too busy" just does not cut it as an excuse. See, e.g., *Selph v. Council of the City of Los Angeles*, 593 F.2d 881, 884 (9th Cir. 1979)("The term 'excusable neglect' is not meant to cover the usual excuse that the lawyer is too busy, which can be used, perhaps truthfully, in almost every case."), quoting *Maryland Cas. Co. v. Conner*, 382 F.2d 13, 16-17 (10th Cir. 1967) and overruled on other grounds in *Andrade v. Attorney General of State of California*, 270 F.3d 743, 752 (9th Cir. 2001)(reversed by *Lockyer v. Andrade*, __ U.S. __, 123 S.Ct. 1166 (2003)); see also *Pinero*

Schroeder v. Federal National Mortgage Ass'n, 574 F.2d 1117, 1118 (1st Cir. 1978) ("attorneys are busy most of the time and they must organize their work so as to be able to meet the time requirements of the matters they are handling or suffer the consequences."); *In re Murphy,* 1 B.R. 736, 738 (Bankr. S.D. Cal. 1979)("It is well settled, however, that the 'press of business' will not support a finding of excusable neglect."); cf., Ninth Circuit Rule 31-2.2 ("A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need" for purposes of moving for additional time to file a brief). Nor is Palmer a stranger to having his objections terminated because he failed to act timely. See Vendler Dec., Exh. "O."

But here, the well-recognized inadequacy of the "too busy" excuse is compounded by additional circumstances of what is not said in Palmer's declaration about his upcoming trial. For this is much more telling about the veracity of his "excuse," and demonstrates why – like the calendaring error – this reason should be given no weight.

- The trial scheduled to start on May 16th in the Southern District of New York is a *personal* case of attorney Palmer. He was personally sued for reneging on a stock purchase agreement and defamation. Vendler Dec., Exh. "D" [Complaint in *CMF*

Investments, Inc. v. Palmer, No. 1:13-cv-00475]. By using his personal lawsuit as a reason for not timely prosecuting House's appeal, attorney Palmer has plainly revealed that he put his personal interests ahead of those of his client.

- The docket from Palmer's personal trial reveals that it was scheduled for one day. Vendler Dec., Exh. "E" [Docket Entry of 3/25/14]. A one-day trial is hardly a reason to let 26 days pass without paying the fee for Ms. House's appeal.

- And what was attorney Palmer doing in his personal lawsuit during those 26 days? According to the docket, he submitted nothing to the district court in New York between April 17 (when this Court gave him an additional 21 days to file the fee) and May 8 (the 21st day). Yet, on day 22, he still does not pay the fee – but nonetheless manages to file his exhibit list and trial brief in New York in his personal lawsuit. Vendler Dec., Exh. "E" [Docket Entry of 5/9/14]. The result: a personal matter is queued for trial while his client's appeal languishes.

- Finally, when this Court's order dismissing House's appeal came down on May 13, Palmer not only paid the fee electronically, presumably from New York, but within literally hours he had

> prepared and filed the present motion; he accomplished all of this on the penultimate day from his supposedly all-consuming trial. Palmer's New York case clearly did not prevent Palmer from paying the fee during the 21-day grace period.

If anything, attorney Palmer's personal trial, like the supposed calendaring error, points to the complete *absence* of good cause or excusable neglect.[2]

The remaining *Pioneer* factors do not tip the scales in favor of reinstatement. To the contrary, they reinforce the conclusion that this appeal was properly dismissed. We turn to those factors next.

2. Prejudice to appellees and good faith by appellant.

In this case, the first and fourth *Pioneer* factors go hand-in-hand. In other words, the prejudice to appellees is shown by the bad faith of appellant House. A little bit of history illuminates this linkage and shines a light on the instant motion.

The underlying lawsuit was filed by appellees Horn and Gurevich as homeowner borrowers who had option adjustable rate mortgages (option

[2] Palmer has used similarly lame excuses in the past to excuse other breaches of court rules. See Vendler Dec., Exhs. "J" (at pp. 97 and 110 of 248).

ARMS) with Bank of America, N.A. (BANA). Borrowers' mortgages with BANA permitted borrowers to defer payment on accrued interest until months or years after that interest accrued. When borrowers paid that deferred interest back, whether in tax-years 2009, 2010, 2011, or 2012, borrowers alleged that BANA did not, but should have, reported those payments on Form 1098. BANA contended that neither the Internal Revenue Code nor Treasury Regulations required the reporting of any deferred interest payments on Form 1098. *Horn v. Bank of America, N.A.*, 2014 WL 1455917 at *1; Order attached as Exhibit "F" to Vendler Dec. ["Final Order"]

After four highly adversarial and lengthy mediations before retired California Court of Appeal justice John K. Trotter, the parties reached a settlement. The district court found the class's reaction to the settlement was very favorable. To date, over 65,000 borrowers have filed claims to avail themselves of the settlement's benefits and only 30 exclusion requests were received. Vendler Dec., at ¶ 10 and Exh. "G" thereto.

Only appellant House, represented by attorney Palmer, objected to the settlement. Final Order at ¶ 17. House's objection included a notice of intent to appear at the fairness hearing, and a declaration by House that included two documents purporting to establish her membership in the class. Vendler Dec., Exh. "I."

- Borrowers objected to House's declaration and pointed out that House's objection should be stricken because her documents failed to show that she had standing, i.e., that she was a class member. Vendler Dec., Exhs. "I," "J," and "K." House and Palmer submitted nothing in response to Borrower's objection to House's standing. Vendler Dec., at ¶ 13.
- As noted, the objection also included a notice of intent to appear at the fairness hearing. The district court, at the fairness hearing, asked "[I]s Susan House here?" and indicated that it was prepared to allow her to supplement her evidence to cure the standing issue raised by Borrowers. Vendler Dec., Exh. L at pp. 1-2. There was no response. Neither House nor attorney bothered to show up at the fairness hearing despite filing a notice of intent to appear. Vendler Dec., at ¶ 14 and Exh. "L" thereto at pp. 1-2. Finding that House's declaration failed to demonstrate her class membership, and with no further evidence being offered by House, the district court then struck her objection. *Id*. and Vendler Dec., Exhibit "F" (Final Approval Order) at para. 17.

Thus, even before this appeal was filed, Palmer and House twice snubbed the process – first by not responding to borrowers' standing objection, then again by not showing up at the fairness hearing despite having explicitly stated that they would.

And now this.

It's a pattern. This lobbing of opening volleys that are never followed-up (whether it's an objection to a settlement, a notice of intent to appear at the fairness hearing, or a notice of appeal) creates a stream of prejudice that ripples inside and outside the context of the immediate parties.[3]

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[3] Their hit-and-run pattern is not limited to this case. Teaming up again with attorney Palmer in *Ralston v. Mortgage Investors Group, Inc.*, USDC ND Cal. No. 08-cv-00536, House filed an objection to a class action settlement – only to then withdraw it. Vendler Dec., ¶ 15.

Palmer and House have also teamed up in the case of *Rose v. Bank of America Corporation* (USDC N.D Cal, No. 5:11-cv-02390. According to the last docket entry in that case, (April 4, 2014), the motion for final approval in that case is currently under submission. Doubtless once the final approval order is issued, it will be appealed from no matter the merits.

Finally, in *Lockett v. Mogreet, Inc.* (2013) Case No. 13 CH 21352 Circuit Court of Cook County, Ill., County Dept., Chancery Div.), House filed an objection supposedly *in pro per*. When it became apparent that Palmer was acting behind the scenes as House's attorney without securing a *pro hac vice* admission, the Illinois Court initiated an investigation to determine the

For the parties, the prejudice arises from reinstating an appeal filed by someone the district court found had no standing to appeal in the first place. This is why Borrowers are asking, in the alternative, that *if* the Court is inclined to reinstate the appeal, which it should not do, that reinstatement be conditioned upon House responding to an order to show cause why the district court's standing order should not be summarily affirmed. (See below.)

There are presently over 65,000 class members waiting for the tens of millions of dollars in monetary class settlement payments. There are also more than 200,000 $40.00 checks that are due to be sent to the injunctive class members for tax years 2010-2012. Mr. Palmer's (skeletal) declaration stating that no prejudice will be suffered by anyone if this Court permits his client to reinstate her appeal is simply not true. The cost to the class from the delay that will be caused by allowing House's appeal to proceed is substantial. And, as months (years?) pass as the appeal works its way

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nature of Palmer's involvement. House then withdrew her objection. Vendler Dec., Exhibit "N" and "O."

Palmer is already facing California State Bar charges for filing false declarations in support of pro hac vice applications and this is doubtless the reason that he had House file in pro per in the *Lockett* case.

through this Court, class members will move, will die, or simply lose interest (pun intended).

The Court should weigh this prejudice against the utter lack of prejudice to House if this Court does not grant her the requested relief. See, e.g., *In re Lang*, 305 B.R. 905, 910 (10th Cir. 2004) ("dismissal of an appeal is not the type of prejudice that will support a finding of excusable neglect. If it were, then all neglect could be considered excusable, because every finding that an appeal has not been timely filed results in the termination of the appeal.") Not only did she fail to demonstrate in the district court that she is even a class member, which alone is reason not to allow her to upset the benefits to the class, but she articulated no credible argument to the district court that the settlement was not in fact a good deal for the class. Indeed, her stake in this case is best demonstrated by the fact that she did not even show up to defend her frivolous claims that the settlement was not a good deal.

Finally, the third *Pioneer* factor (the length of the delay and its potential impact on judicial proceedings) favors denying the application for relief. While 26 days – the amount of time between the issuance of this Court's order to pay the fee and the date on which the fee was paid – may not seem like a lot, there has been prejudice insofar as Palmer's failure to pay fees has already had a ripple effect on the progress of the appeal were it to be reinstated. Specifically, the parties had been scheduled to have a conference with the 9th Circuit's mediator. Because the appeal was dismissed, that conference did not take place and would have to be rescheduled. Briefing deadlines might slip as a result. Palmer should have paid his fee when he filed the appeal. The 21 days was a "grace period" in which Palmer could have paid the fee with an automatic reinstatement of the appeal. But he brushed aside the 21-day indulgence window. His having done so should not prejudice the class.

On balance, the *Pioneer* factors overwhelmingly point to the absence of any "excusable" neglect. Rather it simply shows neglect. Prejudice to the class and the absence of good faith by the objector are parallel factors that both favor the class. And, even if the prejudice to the named and unnamed class members was slight (which it plainly is not), the completely superficial reasons proffered by Palmer as "justification" for the delay lack any weight and overwhelming favor the conclusion that this appeal should not be reinstated.

D. Alternatively, if the appeal is reinstated, this Court should issue an order to show cause as to why the order striking House's objection should not be summarily affirmed.

The district court's order that House lacked standing did not turn on a nuanced application of unsettled law. To the contrary, House's lack of standing was determined as a factual matter by the district court. Specifically, the district court found that "[t]he declaration and exhibits attached to House's objection fail to demonstrate that she paid deferred interest on an option ARM." Final Order at 9:5-6.

Below, this finding was preceded by House and Palmer's dual failures to respond to the Borrowers' standing arguments (and the Bank's joinder), and then not even showing up at the fairness hearing. The lack of standing was manifest. In this context, dismissal of the appeal does not prejudice House or her attorney. *In re Lang, supra*. Their goal (and their practice) is to do as little as possible while waiting for the phone to ring with a cash offer.

Now, House and Palmer have yet again flouted judicial process by ignoring this Court's generous grant of a 21-day grace period. Given this pattern of

- not responding to a dispositive argument below;

- not showing up at a dispositive hearing below; and
- brushing off this Court's warning of a case-terminating order

If the Court is inclined toward reinstating this appeal, House and Palmer should be ordered to show cause why the district court's order striking House's objection based on lack of standing should not be summarily affirmed.

IV. CONCLUSION

Lawsuits are not hobbies. *Contra*, Darrell Palmer, quoted in *Notes From the 15th Annual National Institute on Class Actions*, at http://classactionblawg.com/2011/10/17/notes-from-the-15th-annual-national-institute-on-class-actions/ (accessed on 5/16/14)("Objecting is a hobby for me.") But for House and Palmer's hit-and-run "hobby," 65,000 – plus class members would have closure on this case.

Much more is at stake here than a filing fee. House and Palmer blew off borrowers' argument as to lack of standing; they blew off the district court at the fairness hearing; and they blew off this Court's indulgence of extra time to perfect their appeal. Yes, our language is serially strong. But that is because Palmer and House are serial objectors whose frivolous tactics unduly tax the courts and the parties.

Below, they could not muster enough respect for their own objection to reply to the parties' arguments, or to even appear at the hearing. Here, they disregard a potentially case-terminating order. Enough with their brushoffs. The appeal should stand dismissed or, in the alternative, appellant should be ordered to show cause why the district court's order that House failed in her burden to demonstrate her standing should not be summarily affirmed.

DATED: May 23, 2014

MORRIS POLICH & PURDY LLP

By: /s/ David J. Vendler
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Attorneys for Plaintiffs and Appellees
RICHARD M. HORN and MARIA GUREVICH

CERTIFICATE OF COMPLIANCE

I certify that the word count for the text of this brief, including footnotes, consists of 4,673 words as counted by the Microsoft Office Word 2010 word-processing program used to generate this brief. This is less than the 14,000 words permitted under Federal Rules of Appellate Procedure Rule 32(a)(7)(C).

DATED: May 23, 2014

MORRIS POLICH & PURDY LLP

By: /s/ David J. Vendler
David J. Vendler
Attorneys for Plaintiffs and Appellees
RICHARD M. HORN and MARIA GUREVICH

INDEX TO EXHIBITS

Exhibit	Description
A.	Amended Notice of Appeal. Filed 4/04/14.
B.	Order. Filed 4/17/14
C.	Order. Filed 5/13/14
D.	Complaint Filed. 1/22/13
E.	Civil Court Docket for Case No. 1:13-cv-00475-VEC. Printed 5/21/14
F.	Order. Filed 4/14/14
G.	Horn v. Bank of America Statistics Report Completed on January 14, 14
H.	Objection of Susan House to Proposed Settlement and Notice of Intent to Appear at Fairness Hearing. Filed 2/28/14
I.	Plaintiffs' Response to Objection of Susan House to Proposed Settlement. Filed 3/14/14
J.	Declaration of Michael R. Brown in Support [of] Response to the Objection of Susan House to Proposed Settlement. Filed 3/14/14
K.	Plaintiffs' Evidentiary Objections to the Declaration of Susan House in Support of Her Objection to Proposed Settlement. Filed 3/25/14
L.	Transcript of Motion Hearing Before the Honorable Gonzalo P. Curiel United States District Judge April 11, 2014 in USDC Southern District of California, No. 12-cv-1718-GPC-BLM
M.	Motion for Appointment. Filed 03/21/14
N.	Order. Entered 3/5/14
O.	Memorandum and Order. Filed 9/13/12

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing

RESPONSE OF APPELLEES RICHARD HORN AND MARIA GUREVICH TO MOTION OF APPELLANT SUSAN HOUSE FOR AN ORDER VACATING DISMISSAL OF APPEAL; REQUEST FOR AN ORDER TO SHOW CAUSE; SUPPORTING DECLARATION and EXHIBITS

with the Clerk of the Court for the United States Court of Appeal for the Ninth Circuit by using the appellate CM/ECF System on May 27, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ David J. Vendler